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The complaint plaintiff seeks to file in this action is essentially identical to the one he filed in another case he brought in this court, *James M. Johnston v. Shawn Spears, S and J of Raleigh*, No. 4:10-CV-116-D. The complaint in this previous action was dismissed by District Judge James C. Dever III pursuant to a frivolity review on the grounds of lack of subject matter jurisdiction. (*See* 27 Sept. 2010 Order (D.E. 6)). For the reasons stated in that order, it will be recommended that this action also be dismissed for lack of subject matter jurisdiction.

For the foregoing reasons, it is RECOMMENDED that this action be DISMISSED.

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties or, if represented, their counsel, who have 14 days, or such other time as the court directs, to file written objections. Failure to file timely written objections bars an aggrieved party from receiving a de novo review by the District Judge on an issue covered in the Memorandum and Recommendation and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Judge.

This, the 19th day of November 2010.

  
James E. Gates  
United States Magistrate Judge